

grounds relied on to avoid condemnation were fully developed and argued at the trial and on this appeal. The tests of the samples taken from the shipment showed that it included a substantial percentage of 'leakers' having holes in them not discernible to the naked eye but of such size as to permit the passage of disease germs to and fro, which germs in the test carried to that extent remained alive and propagated. But it was also shown that a much larger percentage of the shipment in which the defective devices were indistinguishably commingled were not 'leakers' and were, therefore, disease preventive and prophylactic to the extent limited by the uses for which they are adapted. The tests applied to the samples rendered them unfit for sale in ordinary course and in some instances caused them to burst.

"The judgment of condemnation preserves to the owners the right accorded by Sec. 334 (d) to repossess themselves of the shipment and separate the defective articles therefrom and upon bringing the shipment into compliance with the Act under designated supervision, to sell the same.

"The position taken by the owners is that the Act does not confer the power to order condemnation of the whole shipment of commingled sound and defective articles; that the designation of the articles as Prophylactic was not 'misbranding' even as to the 'leakers' shown to have holes in them, and that the articles with the holes in the rubber of which they are composed, were not adulterated.

"The trial court filed a written opinion with its findings and conclusions, and the same is reported in 65 F. Supp. 534. It presents the issues in the case and contains a fair statement of the evidence and the grounds of decision. It also reflects careful consideration of all matters of defense asserted for the owners and meets all substantial contentions for their position. We think it continues to meet such contentions, notwithstanding additional briefs and arguments submitted to and considered by us on this appeal. The additional contention that the samples were not representative of the shipment is not sustained. Our study of the record has satisfied us that the charges of the libel of information are supported by substantial evidence and that the provisions of the Act relied on authorized the court to enter the judgment of condemnation of the whole shipment subject to the conditions for repossession, separation and restoration of the shipment to compliance contained in the judgment. We think that the judgment in accordance with the opinion of the trial court (and with its separately filed findings and conclusions) was in all respects correct and proper, and although we recognize the importance of the case to the appellants and as a precedent, we think no good purpose would be served by making a re-statement of it from the record before us. We approve the statement of the case, the findings and conclusions, and the reasoning and decision as set forth in the opinion of the trial court, and find no error therein, and therefore affirm the judgment entered in accordance therewith. Affirmed."

2277. Adulteration and misbranding of prophylactics. U. S. v. 69 Gross * * *
(and 1 other seizure action). (F. D. C. Nos. 23870, 23871. Sample Nos. 12936-K, 12945-K.)

LIBELS FILED: October 27 and 28, 1947, Eastern District of Pennsylvania.

ALLEGED SHIPMENT: On or about July 30, 1947, under the name World Merchandise Exchange & Trading Co., Inc., and on or about September 9, 1947, under the name World Merchandise Exchange, from New York, N. Y.

PRODUCT: 111 gross of *prophylactics* at Philadelphia, Pa. Examination of samples showed that 3.5 percent in one of the shipments and 5 percent in the other shipment were defective in that they contained holes.

LABEL, IN PART: "Lloyd's Prophylactics."

NATURE OF CHARGE: Adulteration, Section 501 (c), the quality of the article fell below that which it purported and was represented to possess.

Misbranding, Section 502 (a), the label statement "Prophylactics" was false and misleading as applied to an article containing holes.

DISPOSITION: January 7, 1948. Default decrees of condemnation and destruction.

2278. Adulteration and misbranding of prophylactics. U. S. v. 85 Gross * * *
(F. D. C. No. 19357. Sample No. 58245-H.)

LIBEL FILED: On or about April 5, 1946, District of Montana.